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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Amendment of the Commission's)
Rules to Establish a Radio Astronomy)
Coordination Zone in Puerto Rico)

ET Docket No. 96-2
RM-8165

To: The Commission

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REPLY COMMENTS

APR 30 1996

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SUMMARY

Puerto Rico Telephone Company ("PRTC") urges the Commission to decline to establish a radio astronomy coordination zone in Puerto Rico. As a threshold matter, the Commission's public notices set forth information on applications for new or modified radio facilities. By reading those public notices — or by subscribing to an inexpensive service that will do so — the Arecibo Radio Astronomy Observatory ("Observatory") can monitor applications and engage in informal coordination with licensees.

Moreover, the Commission has failed in its Notice of Proposed Rule Making to propose standards for measuring interference and for assessing the reasonableness of an applicant's efforts to accommodate the Observatory. In its Comments, Cornell University suggests that the benefits of radio astronomy research outweigh the public interest benefits of emerging communications services in Puerto Rico. Although PRTC supports the mission of the Observatory, PRTC urges the Commission not to leave standardless application review rights in the hands of such an interested party.

Finally, PRTC urges the Commission to clarify that the proposals in the Notice of Proposed Rule Making do not apply to Part 22 fill-in facilities. The Commission does not require notice of modifications and additional transmitters internal to a consolidated cellular geographic service area. It would be nonsensical to require an application to the Observatory where none is required to the Commission.

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To: The Commission

REPLY COMMENTS

Puerto Rico Telephone Company ("PRTC"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, submits these Reply Comments in response to the above-captioned Notice of Proposed Rule Making ("NPRM") released by the Commission on February 8, 1996.

I. INTRODUCTION

In its Comments, PRTC demonstrated that a radio coordination zone covering all of Puerto Rico is not needed to protect the Arecibo Radio Astronomy Observatory ("Observatory") from potential interference. Moreover, PRTC made clear that Puerto Rico is home to a highly developed manufacturing and service economy that requires the same communications and information technology available in the continental United States. The fact that the Observatory is located in Puerto Rico should not consign these critical services to a second class radio environment. Similarly, the asserted needs of the Observatory should not give it spectrum rights greater than those established in the Commission's Table of Frequency Allocations.

This is particularly the case in Puerto Rico, where telecommunications providers are working to increase the telephone service penetration rate. Although great strides have been made in the last twenty years, overall service penetration in Puerto Rico was just 72 percent in December, 1995, compared to 94 percent in the continental United States.¹ To extend service to less accessible areas of Puerto Rico, PRTC must rely on wireless alternatives to traditional, costly wireline services. The development and provision of Basic Exchange Telecommunications Radio Service and other critical wireless operations should not be inhibited for the convenience of one spectrum user in an already congested radio environment.

II. THE COMMISSION PUBLISHES INFORMATION ON APPLICATIONS FOR NEW OR MODIFIED STATION FACILITIES EVERY DAY

First, PRTC demonstrated that a radio coordination zone featuring mandatory notification to the Observatory of all applications is not needed. The Commission publishes information on applications for new or modified station facilities every day. By reading the Commission's daily releases — or by subscribing to a service such as the "Zone Watch" offered by Berry Best Services, Ltd.² — the Observatory will be apprised of applications on which it may file comments. This will be done

1. United States telephone service penetration was at 71.5 percent in 1955.

2. For \$40 per month, Berry Best will monitor the Commission's public notices and will alert the Observatory staff to any applications or modifications within the staff's specifications.

without transferring the low cost of reviewing public notices from the Observatory to all other users of radio spectrum in Puerto Rico.

Celpage, Inc. noted that the burden of reading the Commission's public notices "is imposed on all parties who may be affected by an FCC application, including small businesses, educational institutions, and individual citizens. The Observatory has the same notice and opportunity to be heard as, and no greater 'burden' than, any other spectrum user or private citizen who qualifies as a 'party in interest.'"³ Similarly, the Asociacion de Radiodifusores de Puerto Rico ("PRBA") wrote, "Cornell has far more resources than any of the members of PRBA, and the task of monitoring [Commission] notices cannot plausibly be characterized as an excessive burden."⁴

Indeed, Cornell University's ("Cornell's") suggestion that reading the Commission's releases is burdensome⁵ is belied by its Comments. Cornell wrote that, following notification of a new application, "In order to provide a consistent mode of operation, Cornell plans to provide comments on all applications or notifications."⁶ Cornell added, "A simple form letter will be

3. Comments of Celpage, Inc. at 11.

4. Comments of PRBA at 3.

5. NPRM at ¶ 8.

6. Comments of Cornell University at 5 n.2 (emphasis added).

filed with regard to those applications for which no interference problems are anticipated."⁷

Plainly, a party that is prepared to file pleadings with the Commission "on all applications or notifications" should not at the same time claim that reviewing Commission public notices is "burdensome." Even if Cornell files a "simple form letter," that cannot be regarded as less burdensome than reading the Commission's daily releases. If Cornell can afford the time and expense of lodging pleadings on every application for new or modified radio services in Puerto Rico, it should not be permitted to externalize the limited time and expense involved in reviewing public notices.

III. THE NPRM FAILS TO PROPOSE STANDARDS TO GOVERN THE OBSERVATORY'S TREATMENT OF APPLICATIONS

PRTC also demonstrated in its Comments that the Commission's NPRM fails to make clear what type of reasonable efforts would be required to coordinate radio emissions with the needs of the Observatory and for which services those requirements will apply. The Commission proposes only that the Observatory would determine if the potential for "interference" exists, whereupon "[t]he applicant would be required to make reasonable technical modifications to its proposal in order to resolve or mitigate the potential interference problem and to file either an amendment to the application or a modification application if appropriate."⁸

7. Id.

8. NPRM at ¶ 21 (emphasis added). See also id. at ¶ 39 (draft rule).

Without more, the Commission's discussion of this proposed rule fails to provide sufficient detail and rationale to permit interested parties to comment meaningfully.⁹

A number of commenters shared PRTC's concerns. Celpage, Inc. wrote that, insofar as the NPRM does not define "reasonable efforts" to accommodate the Observatory, "applicants are being provided with precious little guidance as to how they are to accomplish these tasks."¹⁰ Celpage added, "The NPRM's vague and one-sided proposal will provide fertile ground for protracted negotiations and administrative litigation as the Observatory, applicants, and the Commission attempt to discern what is 'reasonable' in the individual case."¹¹

The Society of Broadcast Engineers noted that "the Commission needs to define the term 'reasonable efforts'" and to establish field strength standards below which the Observatory would not be permitted to object.¹² Similarly, "PRBA fear[ed] that in deciding whether a given station modification is warranted, Cornell may focus more on the scientific goals of expanding its ability to reach distant galaxies while overlooking

9. See Horsehead Resource Development Co. v. Browner, 16 F.3d 1246, 1268 (D.C. Cir. 1994), cert. denied, 115 S.Ct. 72 (1994).

10. Comments of Celpage, Inc. at 5.

11. Id. at 6.

12. Comments of the Society of Broadcast Engineers at 3-4.

such concerns as whether a remote mountain village has access to essential news and information."¹³

In fact, PRBA's fears could be well-founded. In its Comments, Cornell wrote, "With the completion of the [Gregorian] upgrade . . . the Observatory will be even more susceptible to radio frequency interference."¹⁴ Further, "External RF radiation [in Puerto Rico] has dramatically increased over the past decade and is likely to continue to increase. The harmful effects will only intensify with the greatly increased sensitivity resulting from the Gregorian Upgrade."¹⁵ Similarly, "With the increasing demand for using the Arecibo telescope, the increased RF interference hampers research all the more."¹⁶

Against this background, Cornell declared:

While it is true that the Observatory's petition for rulemaking eschewed the same level of protection afforded to radio astronomy observatories in [National Radio Quiet Zone], the Observatory did not mean to concede that the need for protection would always be secondary. The Commission's proposal seems to suggest that the public interest benefits of radio astronomy research in Arecibo would not outweigh the benefits of new or modified communications in Puerto Rico.¹⁷

Moreover, with regard to the range of frequencies covered by the proposed rules, Cornell indicated that "there is scientific

13. Comments of PRBA at 4.

14. Comments of Cornell University at 2.

15. Id. at 3.

16. Id.

17. Id. at 5 (emphasis added).

interest in increasing the frequency range beyond 15 GHz."¹⁸ Thus, "Cornell is willing to accept the 15 GHz limit of the proposed rules for the present, but it suggests that Commission [sic] commit to revisiting this limit when the Observatory's use of such frequencies begins to pose interference problems in the future."¹⁹

PRTC admires the work done at the Observatory and is proud that Puerto Rico is home to this unique national resource. However, PRTC urges the Commission not to leave standardless application review rights in the hands of a party who would suggest that public interest benefits of radio astronomy research in Arecibo outweigh the benefits of new or modified communications in Puerto Rico. Although the Commission believes that Cornell will act in good faith,²⁰ Cornell's Comments suggest that it is pursuing even greater protection for the Observatory than that proposed in the NPRM — particularly as the sensitivity of the Observatory's equipment is increased. Such a party should not be permitted to participate in the application review process without clear limits.

At a minimum, the Commission needed to have set forth specific standards for what would and would not constitute "reasonable technical modifications" and "reasonable efforts to accommodate the Observatory" and "reasonable efforts to avoid

18. Id. at 9.

19. Id. (emphasis in original).

20. NPRM at ¶ 27.

potential interference problems."²¹ Similarly, the Commission should have proposed specific interference criteria that the Observatory would use in determining the potential for "harmful interference." Although the Commission indicated that "specifying precise interference standards would be difficult,"²² Cornell's Comments suggest that restrictions on its latitude are necessary.

The development and discussion of such restrictions would have permitted parties truly to assess the costs to be imposed by Cornell's request. At the same time, that type of review might have clarified that the privileges requested by the Observatory would afford the Observatory spectrum rights greater than those established in the Commission's Table of Frequency Allocations. The Commission, of course, may not amend the Table of Frequency Allocations without appropriate rule making proceedings consistent with the Administrative Procedure Act.²³

21. Cornell's expectation of "reasonable efforts" illustrates the need for clear standards. For example, Cornell wrote that "[f]or [broadcast] stations that operate 24 hours per day, arrangements could be made for researchers to use a few nights to conduct their studies while the stations cease or reduced operations." Comments of Cornell University at 8. Time-sharing would likely not appear to anyone — other than Cornell — to be a "reasonable effort" to accommodate an entity with no primary right to those frequencies.

22. NPRM at ¶ 27.

23. Achernar Broadcasting Company v. FCC, 62 F.3d 1441, 1449 (D.C. Cir. 1995); Communications Investment Corp. v. FCC, 641 F.2d 954, 967-68 (D.C. Cir. 1981).

IV. THE COMMISSION MUST CLARIFY THAT ITS PROPOSALS DO NOT APPLY TO PART 22 FILL-IN FACILITIES

Finally, the Commission must clarify that its notification and modification proposals do not apply to fill-in facilities under Part 22.²⁴ The Wireless Telecommunications Bureau recently clarified "that Sections 22.163(e) and 22.165(e) do not require cellular licensees to notify the Commission of modifications and additional transmitters internal to a consolidated Cellular Geographic Service Area (CGSA)."²⁵ The Commission adopted that policy in 1994 as part of its revision of Part 22, and the policy applies to all cellular carriers in the United States.²⁶

PRTC assumes that the proposals set forth in the instant NPRM do not apply to facilities covered by this Part 22 policy. First, the NPRM indicates that the Commission's proposals apply only to facilities for which applications have been filed with the Commission.²⁷ In particular, the Commission proposes that "applicants for new or modified facilities" would notify the Observatory, and that "submission of a copy of the relevant technical portions of the application to the Observatory would

24. See Comments of Celpage, Inc. at 8.

25. Public Notice: Wireless Telecommunications Bureau Clarifies Existing Rules and Commits to Comprehensive Review of Practices and Public Access to Information, No. 62162 (rel. Mar. 26, 1996).

26. See Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, Report and Order, 9 FCC Rcd 6513, 6519 (1994) ("Part 22 Order").

27. See NPRM at ¶¶ 5, 20, 21, 34, 39, 40.

suffice to meet this requirement."²⁸ Plainly, in the case of Part 22 fill-in facilities, there is no Commission application (or even notification) to pass on to the Observatory.

Second, it would be quite inconsistent with the purpose of the Commission's newly-streamlined mobile services processes to require Part 22 licensees to prepare applications for the Observatory, but not for the Commission. In the Part 22 Order, the Commission wrote, "[T]he record supports eliminating the notification requirement for most additions and modifications and that our doing so will save substantial industry and Commission resources."²⁹ The Commission would eviscerate the benefits of that policy for Puerto Rico Part 22 licensees if it reinstated an application requirement solely for the convenience of the Observatory staff.

Indeed, having established the Part 22 streamlining policy, the Commission may not undo that policy in indirect fashion. It is a cornerstone of administrative law that "an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if any agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute."³⁰ In this

28. Id. at ¶ 21.

29. Part 22 Order, 9 FCC Rcd at 6519.

30. Greater Boston Television Corporation v. FCC, 444 F.2d 841, 852 (D.C. Cir. 1970) (footnotes omitted), cert. denied, 403 U.S. 923 (1971).

instance, the Commission must clarify that it is not casually ignoring its Part 22 Order by reinstating application requirements for Puerto Rico Part 22 licensees' fill-in facilities. Reinstating those requirements would deny Puerto Rico Part 22 licensees the benefits of the Commission's streamlining efforts at a time when the communications infrastructure on Puerto Rico is growing faster than ever.

It is noteworthy that on the same day that the Commission released the instant NPRM, the Commission proposed rules to license paging channels on a geographic basis, and to permit paging licensees to add facilities within their geographic areas without obtaining Commission approval for each site.³¹ In that proposal, the Commission wrote that eliminating site-by-site approval for paging facilities "would simplify paging system expansion and substantially reduce the administrative burden on both paging licensees and the Commission."³² The Commission should not add new filing requirements for the benefit of one party at the same time it is eliminating regulatory conditions that inhibit the rapid development of critical wireless services.

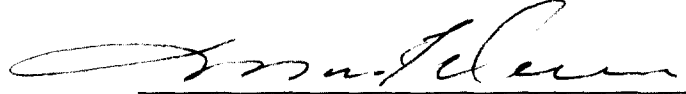
31. See Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Notice of Proposed Rule Making, FCC 96-52, ¶ 21 (rel. Feb. 9, 1996).

32. Id.

V. **CONCLUSION**

For these reasons, PRTC urges the Commission to decline to establish a radio astronomy coordination zone in Puerto Rico.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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